PROCEEDINGS IN THE SENATE

A SCANDINAVIAN EMBARGO.

Private letters from distant parts of the world often contain matter not less amusing for the public than for the correspondents themselves. Thus in a letter of the 25th March, from an American gentleman residing in Stockholm to his friends at home, he lets us into the way in which the good people on the Baltic are cut off during a large portion of the winter from that most craving of all artificial wants, news, to say nothing of letters, and the curious expedients by which a naked and isolated item is signalled across the frozen sea into ice-bound Scandinavia. A half dozen French revolutions might almost blaze and die out, or half a dozen new States be added to the American Union, between the shutting and opening of the gates of the Baltic, and the millions of good people beyond remain all unconscious of it. What budgets of news to be devoured, and what excitement must pervade all ranks, when the return of spring dissolves the icy barrier, and lets in the rush of long pent-up tidings from the outer world! MARCH 25, 1858.

We are the very victims of winter; and, having little else for you to-day, I will tell you how. There is a ca ed Sprogo: and this little isle is the uttermost limit of our intelligence since the 10th. The Great Belt is the divising estuary between the islands Zealand and Funen, and in the winter season the only postal route connecting the whole of Scandinavia (this side at least of Jutland) and the rest of the world lies across this said Belt. All other communication with Russia even has been cut off for five or six weeks, (and, in fact, I send to-day a piece of news taken by the Stockholm papers from a Russian newspaper which came hither across the Great Belt.) It is twenty-two miles wide at its narrowest point, being one more than the Strait of Dover. You will per haps suppose it frozen over, but there is no such good luck for us, and no possibility of such a frost. History relates its having been frozen over only once, a memorable winter of 1657, when Charles X, of Sweden-a more daring general even than his famous grandson, Charles XII-invading Denmark from the south, crossed the Belt on the ice with his whole army, horse, artillery, and foot, surprised the Danish general at breakfast, and dictated terms and peace in front of Copenhagen. This is a favorite subject for Northern painters and poets; and on the walls of one of the state apartments at the palace is a fine fresco of the scene. Well, dear mother, in the midst of this famous Belt is the little island Sprogö. On its southern side a vast plain of ice is a safe bridge of ten miles to Funen; but on the north rolls the deep and rapid tide, a main channel between the Baltic and the North Sea; and here should be the navigation outlet but for a crowd of dangerous islands which choke its eastern mouths. Hence the narrow "sound" at Elsinere is usually the great highway. On the north of our little island, however, rolls the deep and rapid tide, with huge masses of ice floating to and fro, and threatening destruction to the frail barque that might attempt to pass. Near and along the shore "drift ice" is packed, rising and falling with the surging waters, an impenetrable barrier to all approach. The couriers have made daring efforts to cross, but all in vain; and thus 600,000 of people, Swedes, Danes, Norwegians, Finns, and Lapps, beside five Americans, know nothing of the rest of the world since the 10th of the month. I am wrong, however. On the little island of Sprogo there is an ancient tower, from which, with a rude Semaphore telegraph, the poor couriers have signalled their distresses, and also four little items of news which have duly reached the Stockholm papers. These select extracts I presume are fair specimens of couriers' ideas of what may most interest hungry prisoners. You shall judge. We are permitted to know that the Austrian Emperor went to from the assassin; 2d, that Gen. Haynau is dead; 2d, that Jews to the House of Commons had gone through a se- ferred to a committee. cond reading : and, 4th, (a climax) relates a certain interesting circumstance (carrying joy to the hearts of thirty-six millions of Frenchmen in the promise of prolongation of the Empire) concerning the late Mile. Montigo. Not one word, however, of our beloved country: agine that our conversaziones have not been brilliant. Of the four items sent by the courier, only one seems probable, that about the Jews; although opinions vary wonderfully about the one concerning the late Mile. Montigo. I can assure you, however, that the whole four have been put into four hundred different forms, and have still been insufficient to oppose the natural tendency of man to stupidity in times of starvation. People, moreover, are driven to mind other people's business: and, in short, apart from longing and impatience, the

morals of all deprivation is regretable. The last news from Sprogö tells us of eleven different couriers, with their precious bags-three from England, (and America,) five from France, Belgium, &c., and three from Berlin. The island is called Sprogo, from looked upon as an uncomfortable, hateful place, and polite people who wish to escape bores instead of desiring their departure to a nameless place, civilly wish them at Sprogo-a proverb. Every one to his fancy; as for us, we should like uncommonly to pass a few hours there, avec le choiz des malles, (but not, as - would say, mais per des maux.)

On the 12th of March, 1850, we landed at Copenhagen, after a delicious summer steam passage from Lubec; but since December last not a vessel has been affoat this side the Skaw. We have beautiful weather, however, with steady, healthy cold, about 40 (sometimes 10° or 12°) below zero of Fahrenheit.

NEW YORK CITY BLOCK.

Another fine slab of marble has arrived from New York to be deposited in the Washington Monument. It is 8 feet long, 54 feet broad, and 18 inches thick, beautifully wrought. The design, elaborately executed, by Mr. Robt. E. Launitz, in basso relievo, represents the arms of the city of New York, which are surrounded by a beautiful wreath of oak and laurel leaves, and the whole surmounted by an eagle standing on a globe. The border is formed of a bundle of rods encircled by a riband, denoting that in union there is strength. Two blocks have now been received from New York to be placed in the Monu- that vacancy, if he filled it at all, until the next meeting ment; one from the State, a block of pure limestone, beautifully sculptured, and the present one from the city of New York, each at the cost of \$3,000. Several other ciations in that State as evidences of the estimation in which the memory of the illustrious Father of his Country is held by them. All these are assuredly interesting at that moment, and another gentleman had been electand elegant testimonials of gratitude, and are thankfully received by the Board; but I would suggest that of themselves they add but little to the elevation of the Monument. The amount expended on them in the single State of New York, for example, would have added some nine or ten feet to the great structure now in progress, and at the same time have furnished slabs calculated to answer the same end as those which have been contributed. W.

The packet-ship Northumberland, arrived at New York from London, has on board 189 packages for the "New York Industrial Exhibition of all Nations." The ship Constitution is also in, and brings 211 packages for the he had not been re-elected to this vacancy, ever would Fair. The packet-ship Helvetia, from Havre, brings have taken his seat as Mr. Clay's successor until the about 150 packages of goods for the World's Fair.

The Icarian Colony at Nauvoo (Ill.) has recently been increased by the addition of a number of new members from France. Each applicant passes a probation of four months, and is required to furnish to the common stock at least \$80, with a bed and clothing for himself.

DEFERRED DEBATE IN SENATE.

CONTESTED SEAT FROM KENTUCKY-CONTINUED

TUESDAY, DECEMBER 7, 1852. The Senate having under consideration the following esolution, submitted by Mr. Gwin: "Resolved, That the eredentials of Archibald Dixon, Esq. be referred to a select committee of five, who shall consider and

Together with the amendment proposed thereto by Mr.

MANGUM, viz: "And that, pending the action of said committee, the said Archibald Dixon be now qualified and permitted to take his seat in the Senate."

Mr. MASON said: Mr. President, the question before us at this moment, I apprehend, is not to decide upon the right of the gentleman who has brought his credentials here. Shall we decide them for him without a reference to a committee? I apprehend no Senator proposes that, The question is upon the reference of the credentials.

The honorable Senator who has just addressed us ha

attempted to prove that if that gentleman is not allowed to take his seat at once, under these testimonials, it will violate the whole usage of the Senate. Sir, that Senato is mistaken. He will find it impossible to search out a precedent where one bringing credentials from a Legislature has taken his sent under them, unless in case of admitted vacancy; and the reason is obvious to common sense, that, whether he be entitled or not, he brings prima facie evidence that he is entitled, and it is right and just that the representation of the States should be full until his right is inquired into if it is questioned. But that is always where there is an admitted vacancy. The honor able Senator from Tennessee assumes here that there is a vacancy; I say non constat; it is not admitted. Honorable Senators have argued, and argued with great force, lithe rock island in the midst of the Great Danish Belt to show at least a high degree of probability that there is no vacancy, but that the representation of Kentucky at this moment is full. Why, the honorable Senator from Tennessee exultingly says, who can doubt that there is a vacancy?—the roll has been called, the gentleman who should fill that seat does not answer to his name. He might have said, with equal force, that both the seats to which Kentucky is entitled in this body are vacant, be-

cause, to our regret, one of the Senators from that State Underwood) has not yet appeared in his seat this session. And again, I regret to see that an honorable Senator from Florida (Mr. Mallory) has not yet appeared; it might, therefore, be argued with equal force that his seat is vacant. So I am reminded it might be in the case of the colleague of the honorable Senator from Tennessee himself. I submit to the honorable Senator, then, that that is no proof that there is no vacancy. Now, sir, what are the facts in this case? A vacancy

certainly did occur, to all common apprehension, in the representation of Kentucky in the Senate, by the decease of the very distinguished geutleman whose death we were so recently called upon to lament. Nobody doubts that. An honorable gentleman brought here a commission from the Governor of Kentucky, by which the Senate was in formed that that vacancy occurred in the recess of the Legislature, and therefore he filled it by a temporary appointment. Nobody doubts that. The honorable gentle-man who bore that commission sat in his seat here until the close of the last session. That is perfectly clear. That honorable gentleman, so far as I am informed, never has resigned his seat. He is absent; but what does that prove? Nothing, except that he is absent; and if the fact be as honorable Senators have contended, that, under the Constitution, the commission from the Governor made his office to inure until the next meeting of the Le gislature, he is a Senator now, although he is absent, and it is in the power of the Senate, if they think proper, to compel his attendance. It is perfectly immaterial whether he is present in this chamber or not, so far as his right

to the seat or the question of vacancy is concerned. I ought to entertain no definite opinion on this subject until the question is brought before us in the usual form on the report of the committee; and I make these remarks only to show that it is not an admitted vacancy. I concede fully, with the honorable Senator from Tennesses that where there is an admitted vacancy, and a gentle man brings here the ordinary commission of the Governor, if it is one that occurred in the recess of the Legislature of the State, or the credentials from the Legisla ture of the State, if the vacancy has occurred by the expiration of a term while they were in session, he brings the proper evidence to entitle him to fill that vacancy, and if ere is a question of contest he will hold it until that contest is decided. But the whole question turns upon the fact of the vacancy. I mean to give no opinion on that. I mean to say only that if the case is presented to the Senate prima facie, when there is no vacancy, and when the representation from Kentucky is full, the honorable gentleman who has brought the credentials now from that State has no vacancy to fill, and he has not there-fore, brought prima facie evidence of being entitled to the seat, because there is no seat to take church one day to thank God he had escaped with life questions which should be examined by the committee. I humbly submit, therefore, to the Senate, that it will not a very desirable expenditure of our time in the British Parliament for admission of the this discussion, but that we should let the matter be re-

Mr. GWIN. Mr. President, like the honorable Sena so. If I had, I should not have moved the reference of the subject to a committee. I wish, though, to put my self right in regard to this question, as it was presented not one word from the churlish couriers of what sort of letters, and how many for this household. You may imble Senator from Tennessee, to show that my present course is inconsistent with that which I then pursued. If that Senator had read every thing I said, it would have been plain to the Senate that my objection originated in the fact that the Governor of the State of Kentucky had not performed his whole duty-that he had no right to make an appointment, and limit that appointme the Constitution gave him no power to do so, and that it was an appointment filling the vacancy till the next meeting of the Legislature, or it was no appointment at all. My own private opinion was, that it should be declared to be no appointment, to show to the Executive of that State, and to the Executives of the other States of this Confederacy, that they can exercise the power of appointing Senaters only in accordance with the Constitution of the United States. I was opposed to the admission of the gentleman who presented the paper, because it was, in my opinion, a defective, an objectionable, or at least such a commission as had never been presented before, Sprog, (language,) and ö, (island,) because it often thus becomes a Babel of couriers. In Denmark it is our opinion that he had no power to fill the vacancy, except in accordance with the provisions of the Constitution. The Senate overruled my objection at the time. It was stated that the proper time to bring up the question would be at this session, and I acquiesced, not wishing to continue the discussion.

The Senator from Tennessee has gone into this question at large, and I submit to the Senate whether he has touched it at all. I submit to the Senate whether or not he has presented the question that is now before us for our action. I certainly did not so understand his argument. The question is, when a resignation creates a va-Why, Mr. President, it cannot be contended that the seat of Mr. Clay was vacant when Mr. Dixon was elected by the Legislature of Kentucky. It cannot be contended that there was a vacancy in the Senate from the State of Kentucky at that period; and if a resignation is not a vacancy, how had the Legislature the right to fill that vacancy? I have before me a statement from the Secretary of the Senate, showing that Mr. Clay received his per diem as a member of the Senate up to the 29th day of June, 1852, the day of his death. He was a Senator from Kentucky, and we paid him from the Treasury of the United States as a Senator up to that period. At his death the seat which he had occupied came vacant; but was the Legislature of Kentucky then in session! Nobody pretends that it was. Therefore, that provision of the Constitution which gives to the Governors of the different States the power to fill vacancies oc curring in the representation of their State, gave the Gov ernor of Kentucky the power, and he was compelled to fill Legislature. Has the present applicant for the seat in the Senate from Kentucky been elected by a Legislature that convened after the vacancy by death of New York, each at the cost of \$3,000. Several other blocks have also been sent by different respectable asso-Mr. Dixon had been elected upon the letter of Mr. Clay resigning his seat prospectively. Suppose, further, that Mr. Clay, his health failing him more rapidly, had written a second letter to the Legislature resigning his seat

> Mr. Clay would have taken his seat-whether not have taken it for the entire balance of the term for which Mr. Clay was originally elected? I will state another case. Suppose Mr. Clay had died last January, after Mr. Dixon had been elected. Suppose he had died during the session of the Legislature, and the Legislature had proceeded, in accordance with the vacancy thus created, to elect a Senator, and that the person elected had not been Mr. Dixon, who would have been the Senator in the place of Mr. Clay? No one can pre-tend to say, in the face of the Senate, that Mr. Dixon, if whole term expired, when he might be elected for a new term. Suppose, again, that Mr. Clay had died in January last, and Mr. Dixon had been elected to fill the vaoccasioned by his death, with what credentials cancy occasioned by his death, with what credentials would be have presented himself here? Should we ever have heard of the paper that was presented yesterday?

Never. It would never have been seen here.

ed-suppose Mr. J. J. Crittenden had been elected in-

stead of Mr. Dixon-I should like to know for what pe

riod the gentleman elected on the second resignation of

I insist upon it that the Governor of Kentucky had no right to put any limitation in his commission to Mr. Meriwether. I insisted upon it before, and it is the ground that I now occupy. I do not wish to prejudge this question. I do not believe there is a vacancy in the Senate from the State of Kentucky, as I said before. As to ate from the State of Kentucky, as I said before. As to Mr. Meriwether not being present here, is the Senator from Tennessee prepared to say, that, if it is declared that he is the Senator from Kentucky, he has resigned his scat—that he will not come here and take his seat? Can the Senator say—is he prepared to say—that if Mr. Dixon's election is declared to be an invalid one, Mr. Meriwether will not come here and claim the seat that has been conferred upon him by the Executive appointment of been conferred upon him by the Executive appointment of the Governor of Kentucky? Certainly he has no such power. Whether Mr. Meriwether is contesting the seat or not, if he is declared to be a Senator from Kentucky, you will very soon see him in his seat. There is no mis take about that.

As the Senator from Virginia says, I do not wish to o cupy the time of the Senate in discussing this question now. I want to vote. I am prepared to vote, and I hope he Senate is prepared to vote, whether or not it will et the gentleman who now applies be sworn in, or whetherthey will send the case to a committee for investigation.

Mr. SEWARD. Before the question is taken I have a
word more to say upon it. The honorable Senator from Virginia (Mr. Masos) seems to me to concede the whole case in the hypothesis which he presents. He concedes to the honorable Senator from Tennessee, who has so very ably and fully argued the question this morning, that where there is an admitted vacancy, a person who presents credentials from the Legislature authorizing him to take the seat, thus admitted to be vacant, should be received and sworn in as a member of the Senate, subject, however, to the reservation that his right to retain it against some other claimant shall always be open to the examination of the Senate. But he says that this principle is confined to the case where there is an admitted vacancy. Now, sir, I ask what constitutes an admitted vacancy? What constitutes the admission of a vacancy? An admission im-plies a party qualified to admit, with a title to admit or to deny, and an act of admission, as opposed to an act or declaration of denial. I ask for the party who denies in this case. Let him stand forth in the presence of the Senate of the United States and of the American people. I ask, I challenge him to come upon the floor of the Senate of the United States, and deny that there is a vacancy Who is he? Let him stand forth and he shall be heard He comes not. There is no man here that is qualified t deny. Then, when no man appears who is qualified to But we are told that there is somebody somewhere who is qualified to deny, and that we must prove a nega-

tive, and prove that no such person does deny, or car deny. Well, sir, the honorable gentleman who present his credentials here takes that burden of proof voluntarily upon himself. He takes it upon himself, and does that any person who it is alleged might make this denial fails to come and make it, and therefore admits that the seat is vacant. Yes, sir, he shows that; and how does he show it? There, in the place in which the honorable Senator from Ohio (Mr. Chase) is sitting temporarily, [pointing to the seat occupied by Mr. Meri-wether at the close of the last session,] is the seat which was filled by the Senator who represented the State of Kentucky in this Senate on the first day of Septembe last. That seat is vacant. There is the evidence that the place is vacant. It is prima facie evidence. It is suffi cient, because we are upon a question of an admitted

case upon prima facie evidence.

But there is more, sir, in this case. Not only is the seat vacant—not only is the person who it is alleged might challenge this place, called, and he comes not—but there is a still further fact, that when you refer to the records of the Senate to see whether that or any other person on earth can set up a claim to this place, or can allowed to come here and deny that it is vacant, you find the commission which that honorable Senator, and all honorable Senators from the State of Kentucky, have had. And what are they? In the first place, there is the commission of the Hon. Henry Clay. Will he come? No; he resigned. His resignation was made to take effect on a certain day fixed. That day has elapsed, and he comes no more. What then? That honorable and distinguished Senator died before the day fixed for his resignation t take effect; and then the Hon. Mr. Meriwether appeared here, with a commission to take the place which had thus mission before you. It is open to the whole world; and what does it say? It is a commission which authorized and required him to take that seat, thus vacated upon the death of the Hon. Henry Clay, and hold it—until when, sir? Until the first Monday of September, 1852, and no onger-the very day fixed by the Hon. Mr. Clay, before his death, for his resignation to take effect. Now, sir, here is not only the fact that the person who it is alleged might deny that this vacancy exists, does not deny it, and that he does not appear here to deny it, but there is the other fact that he has no title to deny it; and it would be just as violent a presumption for the Senate, on the 4th day of March next, when the successor of the other honor-able Senator from Kentucky, (Mr. Underwood,) whose time then expires, appears to take his place in the Senand claim to fill the seat, as it is to make it in this case. It would be exactly the same kind of a case as that of supposing that the Hon. Mr. Meriwether will appear here on the 7th of December, 1852, to take a seat which he was authorized to occupy only until the first Monday of September, 1852.

I forbear, as I did yesterday, from going into the merits of the question which lies beyond; but I cannot omit to say that it is a question which touches the right and interest, not only of the State of Kentucky, but of all the States of the Union. There is no claim on the part of Kentucky that this place shall be kept vacant. Kentucky would be qualified to deny, would have the right to deny this vacancy; and nebody but Kentucky has a right to deny it, or the Senators disputing upon a title derived under her. Now, there is no opposing claim; and the State of Kentucky appears here in the only manner she can appear, and demands, in the person of her Senator here, that he shall be received and allowed to take his place. If you deny him upon the ground which has been urged, you may equally well in any other case, when a Senator shall come to fill a regular vacancy, of a full term, insist upon it that you will make him stand outside the d his State outside the Senate chamber, until you have canvassed his credentials and ascertained whether they are final and conclusive. And in that case, if you can keep out the State of Kentucky, you can keep any other State you please; and a majority here may de-termine, for the passage of given measures, to have a Senate consisting of such Senators, representing such States, as shall favor such measures. I rejoice that there s no circumstance, nothing in the state of existing circumstances, which would give rise to the supposition that any such purpose can be entertained here now; and it is cause the circumstances are propitious to having this case decided upon its merits, without a bias on the part of any Senator, or any other motive or circumstance which could justify the indulgence of such a suspicion that I do most sincerely hope that there may be no departure now from what has been the customary practice of the Senate; that the honorable gentleman who pre-sents himself with his credentials may be allowed to take his seat; and that the investigation which it may be necessary to have about his title to the seat may result in a

proper regard for the rights of Kentucky and all other parties interested in the question.

Mr. BRADBURY. The amendment of the Senator from North Carolina (Mr. Mangun) proposes the admission of the claimant to a seat prior to the decision of the ques-There seems to be, in this case, a serious objection to this course, arising from the fact, that, in the event the Senate should determine that he was not entitled to the seat, there would, for the time being, be three persons who would have seats in the Senate from the State of Kentucky at the same time. This anomaly would seem to require us to determine the question of right before we admit to the seat. It is a constitutional question that arises, and will not admit of being changed by courtesy. The honorable Senator from New York remarked that this is a question touching the rights and interests of the sovereign State of Kentucky. It appears to me that the true question is, whether the Legislature of a State has a right to elect a Senator to fill a contemplated vacancy to happen during a recess of the Legislature, prior time when such vacancy shall happen. When did the va-cancy arise in this case? The resignation did not create a vacancy until it took effect. It will not be contended that there was any vacancy in the seat in question until the time when Mr. Clay ceased to fill it. The resignation made in December, to take effect in future, did not leave that seat vacant until the first Menday of September. The Legislature had adjourned prior to that time. question then arises, if indeed it arises to a question, was this not a vacancy which, in the language of the Constitution, "happened tion, "happened" "during the recess of the Logislature!"
It will hardly be questioned, I think, that it was. It arose during such recess. If I am correct in this, the Consti-tution prescribes a mode by which such vacancies shall the filled? The language of the Constitution would seem to be too plain and explicit upon this point to admit of doubt. It declares that "if vacancies happen by resignation or otherwise, during the recess of the Legislature of the Legislature of the control of of any State, the Executive thereof may make tempora ry appointments until the next meeting of the Legislature, which shall then fill such vacancies." In the first place, the Constitution devolves upon the Executive the power to fill such vacancy. But in this case, it is said the Legislature undertook to fill it. The Legislature is authorized, in one contingency, to fill a vacancy happen-ing during a recess; but when? Can the Legislature, mder the Constitution, fill the vacancy in advance of the time when it happens? Has the power of filling it in in ad-vance been conferred by the Constitution? The Consti-

tution prescribes that the Executive "may make temporary appointments until the next meeting of the Legisla-ture, which shall then fill such vacancies." So that ture, which shall then fill such vacancies." So that ture, which shall then fill such vacancies." So that neither the Executive nor the Legislature are authorized by the Constitution, it would seem, to fill a vacancy happening during a recess of the Legislature until ofter the vacancy shall happen; and therefore, if this were a vacancy arising during the recess, and one that the Legislature might fill, it must be at a meeting subsequent to the happening of the vacancy. But, ing subsequent to the happening of the vacancy. But, on the face of these credentials, it appears that the Legislature of Kentucky undertook to fill the vacancy in advance, so that the question is presented upon the face of the credentials; and we are to inquire whether the Legislature of Kentucky has followed the authority conferred by the Constitution. I have felt called upon to say this much in reply to suggestions thrown out by the honorable Senator from Tennessee and the honorable Senator from New York, who have gone at length into the discussion of the general question, lest it should be supposed their views were assented to as correct and un-

But when did the vacancy in question first occur? Did it in fact happen on the first Monday of September? The death of Henry Clay, deplored by the whole nation, occurred on the 29th of June last, and that death created a curred on the 29th of June last, and that death created a vacancy which may be regarded as covering the whole unexpired term of Mr. Clay. Can that vacancy which first occurred be divided and cut up into parts, except so far as the Constitution prescribes? The Executive can fill that part of it which occurs before the first meeting of the Legislature; but can he divide such portion into parts? If so, is there any thing to prevent his appointing a new Senator for each day of the period he is authorized to fill? Has he any other authority than to fill the vacancy, without imposing other limitations than those vacancy, without imposing other limitations than the prescribed by the charter under which he acts?

It would seem, then, that two difficulties are present-ed—first, whether this was not one of those vacancies that must be filled by the Executive; and, secondly, if it was not a vacancy to be filled by the Executive, whether it was not one that must be filled by the Legislature subsequent to the time when it happened? And it makes no difference in my mind whether there is or is not any one present to claim the seat. The question is whether the Legislature of Kentucky, at the time it undertook to make this election, possessed that power. It has already been decided in one case—the case of Mr. Lanman, who claimed a seat as Senator from Connecticut under Execu-tive appointment—that the Executive has no authority to make an appointment to fill a vacancy prior to the time such vacancy has actually arisen. It remains to be determined whether the Legislature possess such power. Story, in his Commentaries upon the Constitution, vol. 2, page 204, adverts to this subject, and says:

"There seem to have been three courses presented for the consideration of the Convention—either to leave the vacancies unfilled until the meeting of the State Legislature, or to allow the State Legislatures to provide at their pleasure, pro-spectively, for their occurrence, or to confide a temporary ap-pointment to some select State functionary or body."

It would seem, therefore, that the great question is whether the Constitution conferred upon the Legislature authority to fill this vacancy in advance? It is unlike the case of electing a Senator to fill a term which is to commence at a future day, for in such case the Constitution does not prescribe the time when the election shall be had, while it does so in explicit terms when a vacancy

happens during a recess of the Legislature.

Mr. BUTLER. Mr. President, this subject ought to take one course or the other. We ought either to discuss it now as in Committee of the Whole, and decide upon it as a Senate, or we ought to refer it to a committee. I confess that I have no definite opinion upon the subject. I think the question resolves itself into this: what is a vacancy within the contemplation of the Constitution? Mr. Clay agreed to hold his seat for about nine months after the date of his letter until his resignation became perfect by the expiration of that time. There might have been a vacancy during that time, as there was one occa-sioned by his death; and then the question was, whether sioned by his death; and then the question was, whether there was a vacancy after that time with regard to the residue of the six years for which Mr. Clay was originally elected. And then a question occurs upon that, whether it was competent for the Legislature, before the expiration of the time, to fill the place?

These are questions which necessarily come up for decision; and I confess that the whole subject turns upon the question of what is a vacancy? If it is to be discussed by the Senate now, I am willing to go into the discussion; if it is to be referred, I must be permitted to say that I should dislike that any gentleman should commit himself beforehand by the expression of an opinion. I will not commit myself by expressing any opinion upon

mark of the honorable Senator from Tennessee. If it were not perfectly clear that this seat is contested, I should be in favor of the gentleman who brings creden tials from the State of Kentucky taking his seat; is perfectly apparent that the seat is to be filled by one, and that the moment it is filled by one, you exclude another who claims it. The seat cannot be filled by more than one, and if we admit this claimant we exclude another who cannot be filled by more than one, and if we admit this claimant we exclude another who cannot be filled by more than one, and if we admit this claimant we exclude another who cannot be seat to be filled by more than one, and if we admit this claimant we exclude another who cannot be seat to be filled by one, and the seat is to be filled by one, and the seat is to be filled by one, and the seat is to be filled by one, and the seat is to be filled by one, and the seat is to be filled by one, and the seat is to be filled by one, and the seat is to be filled by one, and the seat is to be filled by one, and the seat is to be filled by one, and the seat is to be filled by one, and the seat is to be filled by one, and the seat is to be filled by one, and the seat is to be filled by one, and the seat cannot be filled by more than one, and the seat cannot be filled by more than one, and the seat cannot be filled by more than one, and the seat cannot be filled by more than one. ate, to refuse to admit that successor, upon the ground, other who claims under a different title. Under this state of affairs, I think it but right to both, but justice to the State of Kentucky, whose constitutional rights are to be affected, and to the people of Kentucky, that we should decide, as between these two gentlemen, which of them shall fill the seat; because, if we decide that one shall fill it, the other will have to make a contest in order to get his rights considered. If Mr. Meriwether fill the seat Mr. Dixon must contest it. If Mr. Dixon fill the seat, you force it on Mr. Meriwether to contest. All the facts are before the Senate, and I think we ought to decide between them without either apparently contesting the

This is my view of the subject; but I am free to say that it is one of those subjects which it might be as well for the Senate to discuss and decide without a reference as to refer it to a committee. I am perfectly willing that it should take that course; but if it does take that course, I think we ought to understand it fully. We ought to discuss it fairly, and give our opinions with all the light which may be before us. I am free to say that I have not any very definite judgment upon the subject. It is a very nice question. I repeat again, it is a question as to when ther it was competent for the Legislature, prospectively, to fill the vacancy—for I can regard it as a vacancy—from the time which he himself limited for his service until the expiration of the term for which he was elected. I can regard that as a vacancy; and another vacancy occurred by his death. But the whole question turns upon that point-as to the competency of the Legislature to exersise that function : and that, sir, is a question upon which I am not prepared, from any thing which has said, to form a satisfactory opinion. I would prefer to hear discussion from other sources upon that. I should like to hear the precedents cited. I am satisfied, how-ever, of one thing; that, from the precedents which have been read, Mr. Clay's resignation was an executed deed I had rather a different opinion until I heard the precedents read. But now I think that from the time he signed that paper it was an executed deed, irrevocable by him. It seems to me to be so. But then the question is, whether the Legislature, in anticipation, could fill the va-cancy before the time arrived at which it was to occur, and I should like to hear gentlemen argue that point be

Mr. DAWSON. I would make a suggestion to my friend from South Carolina. The question is not now who is entitled to hold this seat. The question is one more of courtesy towards the State as to who shall take the seat for the present. The precedents are all before us, uniform, with single exception, showing the propriety of this course. do not intend to argue the question now; nor do I intend to commit myself as to the course I shall pursue in regard to the final vote. But here are credentials presented by a Senator said to be elected by the Legislature of the State of Kentucky. They have been read at your table, sir; and the question is, what force are they to have be-fore this body? Are they not prima facie evidence that the applicant for the seat has been elected according to the Constitution of the Union and the laws of the State of Kentucky? Is not that true? Certainly it is. Will he not, therefore, be entitled to his seat unless there is some opposition presented from some other source? Who prents any opposition to the truth of these credentials ? Let us ask ourselves the question honestly. Is there a Senator upon this floor who presents a protest or an objection, or who denies the constitutional right of this gen-tleman to take his seat? Not one.

But it is said that at the adjournment of the last session of Congress there was a Senator in the seat which is sought to be filled by the gentleman whose credentials have been presented. Where is that Senator? He is absent. Why absent? Upon our record are his creden-tials. They were read here when he took the oath of office, and they show that he was entitled to fill the seat only until the first Monday of September last. The evidence under which he took that seat was received by you, and in conformity to it he filled the seat, and in obedience to it he has retired. Can any man then honestly rise here and say to Kentucky that there is a contest for it. How, then, do gentlemen undertake to distinguish between Mr. Dixon and my colleague (Mr. Charlton) who took his seat precisely under the same circumstances, and, as I am inclined to think, took his seat correctly. Now let me present to the Senate the condition of these cases. Mr. Clay resigned in anticipation. He did not notify the Senate of the United States of his intention. He sent his resignation to the elective power—the Legis-lature of Kentucky. Judge Berrien, the distinguished predecessor of my present colleague, resigned in antici-pation. These are two distinguished men, known to the country as great constitutional lawyers, and distinguished for the soundness and correctness of their constitu-

tional opinions. They believed that they had the right to resign in anticipation. They both resigned. The Legislature in Kentucky filled the vacancy. No Legislature being in session in Georgia, the Governor of the State of Georgia and the power of the Governor of the State of Georgia and the power of the Legislature of the State of Kentucky depend upon the Constitution of the United States; and the power of both is to be found in the same clause. When did my late distinguished colleague resign? He resigned in the month of April last, but his resignation was to take effect on the first of June. but his resignation was to take effect on the first of June. The Senator from Maine (Mr. Bradhury) says a Govern-or cannot appoint until a vacancy has actually occurred, and he seems to draw from hence the conclusion that the Legislature, in like manner, cannot appoint until the vacancy has actually occurred. Is that true? Where is the article of the Constitution preventing it? Where is the opinion of a single distinguished jurist or a constitutional lawyer from the foundation of the Government to the present hour denying the power to the Government to the present hour denying the power to the Governor or to the Legislature? Nowhere. My present colleague was appointed on the 17th day of May, his appointment to take effect from the first of June. Why was he appointed in that way? In order that he, as the successor of Judge Berrien, might be here on the first day of June, so soon as Judge Berrien vacated the seat in order that the State of Georgia, under the Constitution—which contemplated that each State should uniformly and steadily templated that each State should uniformly and steadily have two Senators in this body—might be fully repre-

sented. That is the reason of it. Why, let me suggest a case to the Senator from California. Suppose he desired to resign to-morrow, but did not wish to deprive his State of two Senators upon the floor; if the Governor of California could not appoint until after the day of the resignation, it would be probably two months before there would be a successor here to take the seat. Did the Constitution of the United States ever contemplate that a man must resign on a particular day, and that the very day he resigns he must leave the seat, and thereby leave a place vacant in the Senate of the United States? Under such a state of things, the more distant a State was from the seat of Go-vernment, the longer a vacancy would exist. From the foundation of the Government the practice has been different. In 1815, in the case of Bledsoe, the Senate decided, by a solemn vote of 27 to 6, that a Senator had a right to resign in anticipation. And what was the principle of that case? Look back at the debates, and you will find that the idea was this: the resignation might be made to take effect by a given day, so that in the mean time the elective or the appointing power should have an opportunity of appointing a successor to be in the Senate to fill the seat at the time the vacancy should ac-

tually occur.

My friend from South Carolina says that he has now no doubt that a Senator may resign, to take effect in futuro. If he may resign, to take effect in futuro, it is for the purpose of enabling the appointing power to fill the vacancy in anticipation of the day upon which the resignation is to take absolute effect; and, in his language, the resignation is a deed executed, and the person who has the right under that deed, either to fill the seat or to designate who is to take possession of the property, can fill it in anticipation; and when he comes here with the deed made out in anticipation, and presents it on the proper day, it takes instantaneous effect, and the party olding it is entitled to be admitted to the seat. And it is right that it should be so. Now, if it be true that Mr. Clay had a right to resign in anticipation, the elective power had a right to fill the vacancy in anticipation. The Legislature of Kentucky being then in session, elected the present applicant, the Hon. Mr. Dixon, to take the seat under the precise power under which the Gov-

ernor of Georgia appointed my present colleague.

I wish it to be understood that I do not say all this is right. The decision of 1815 may have been wrong, and the subsequent practice may have been wrong; all I say s, that if this course has been admitted by Congress-if it has been acquiesced in by the States, and become the practice of the Government here, and the practice of the Governments of the States, when this gentleman presents which we had up yesterday. The credentials were fore the Senate, and were then considered. If we also considered the senate is but the senate, and were then considered. it has been acquiesced in by the States, and become the practice of the Government here, and the practice of the Governments of the States, when this gentleman presents himself here, it is but courteous to the State—it is but fore the Senate, and were then considered. If we pursuing the uniform course, to permit him to take his go on to-day with the question which was then underposed uniform course, and why? Because the sideration and proceed with the debate, let us do it is prima facie case. Such has been the reason for the prima facie case. Such has been the reason for the prima facie case. Such has been the reason for the prima facie case. Such has been the reason for the prima facie case. Such has been the reason for the prima facie case. Such has been the reason for the prima facie case. Such has been the reason for the prima facie case. Such has been the reason for the prima facie case. Such has been the reason for the prima facie case. Such has been the reason for the prima facie case. Such has been the reason for the prima facie case. Such has been the reason for the prima facie case. Such has been the reason for the prima facie case. Such has been the reason for the prima facie case. Such has been the reason for the prima facie case. Such has always been thought desirable to get at the question.

Mr. HUNTER. Mr. President, I do not see anyly facient f

They are dated on the 17th day of May last; and they authorize him to take his seat on the first day of June in place of Judge Berrien; and if he had been here on the ast day of May, sitting behind Judge Berrien, he would a reference to a committee or in some other way. have had a right to step in the next morning and take a seat in his place. But, sir, what does all this prove? That the Governor of Georgia and the State of Georgia believed that Mr. Berrien had the right to resign in anti-

Moreover, it is said that the certificate is null and void unless it states in the words of the constitution that the appointee is to held "until the next meeting of the Legislature." Why, the certificate of my colleague—which is on parchment, and in a form coeval with the existence of Georgia as a State of this Union—is not that his term shall be "until the next meeting of the Legislature," but that it shall be till the 2d day of March next. Why that it shall be till the 3d day of March next. Why was the whole matter one way or the other. At all events, Because, before the resignation of Judge Berrien, in anticipation of the vacancy which would occur after he 3d of March, 1853, the Legislature, in the latter end of 1851, had elected Robert Toombs to fill the term commencing from and after the .3d of March next. Judge calling the roll, the name of Mr. Meriwether shallbe Berrien resigning in the mean time, my colleague comes in to fill the vacancy thus existing; which is a vacancy precisely similar to that created by the death of Mr. Clay. here are two cases precisely analogous. Was there any law violated; was there any precedent violated by allowing my colleague to take and hold his seat under these roumstances? Not at all. When he came here I had the honor of presenting his credentials, and I did it with very great pleasure. They were read to the Senate. Did anybody object to their informality because they stated that he was appointed until the 3d of March next, instead of until the next meeting of the Legislature? Not at all. But he took his seat; and for what reason? proad seal of Georgia was prima facie evidence entitling him to do so. Could not Mr. Toombs have come and contested his seat? Could not any body else have come and ontested his seat? Certainly they could if they had any

How does the honorable Mr. Dixon come here? With a ommission stating that he has been elected a Senator in the Congress of the United States by the Legislature of the State of Kentucky, to hold from and after the first Monday in September, 1852. What is the effect of that certificate? Certainly it is the highest evidence that the Legislature of Kentucky has done the deed; and the question is, whether, under the constitution, they had the power to do it? There is no doubt of the power; and the power to do it? There is no doubt of the power; and the presumption is, that they have exercised it correctly. If these presumptions are in his favor, he is entitled by courtesy to take the oath. But these presumptions may be all set aside by somebody coming in and contesting, and alleging that he was not constitutionally elected—that the Legislature was not the proper body, and that it had not the power to elect; but is there any suggestion of that kind? And even if there were such suggestions, what would courtesy demand of us? Should we not do precisely what was done in the case of Robbins and Potter. cisely what was done in the case of Robbins and Potter, claiming seats as Senators from Rhode Island? That difficulty occurred in this way: There was a Whig Legisla-ture, and they elected Mr. Robbins Senator. Before Congress met the Legislature was called together again. There was a change in its political character, and at this session Mr. Potter was elected. Both of them came here with the broad seal of the State. Mr. Robbins was first elected, and his credentials were presented. What did the Senate do then? Mr. Robbins was the first man elected, and his credentials showed it; and out of courtesy to the State, and in obedience to what was due to its sovereign power, the Senate said the credentials of Mr. Robbins show a prima facie case, and we will admit him to his seat: afterwards we can refer the matter to a committee o investigate whether any thing was unconstitutional; and we can then, if we find it proper, deny Mr. Robbins the seat, and give it to Mr. Potter. There is no contest of that kind here; and I appeal to the dignity of the body, and to the courtesy of the body, to follow the pre-cedent of that case, and allow Mr. Dixon to be admitted to his seat.

Why should the Senate refer the credentials of Mr. Dixon to a committee, when it has never been done in such a case? Why is it that the broad seal of Kentucky is to be thus treated when the broad seal of no other State has ever been so treated? But it is said that there is testimony in this case showing that Mr. Dixon is not entitled. I say the testimony is the very reverse. The testimony Mr. Meriwether's credentials is on our records; and his credentials gave him power to-net as Senator only until the first Monday of September last. He was Senator until that time by appointment of the Governor of Kentucky. Then here is the Governor's certificate to Mr. Dixon, informing him that he has been elected by the Legislature to be Senator from and after that day. is the conflict, or where is the ground which will justify as, in our own consciences, in saying that Kentucky shall not be permitted to take her proper constitutional posi-tion in the Senate? There is not a particle of difficulty there is no conflict between the two commissions. It has not been said that Mr. Dixon's election was unfair or unconstitutional; but it is merely supposed that some body else—for instance Mr. Meriwether—may be entitled to the seat, whereas the record shows that Mr. Meriwether s not entitled to act now as Senator.

I do not say how I shall vote on the final question a

be made. I shall vote for that amendment; but if that does not prevail, I shall be willing to bow to the will of the majority and submit to an immediate reference.

I think, Mr. President, that during your long experience in this body you have never known such an application as the present one to be denied. I do not think there has been any case since you have occupied that chair, or have been a member on this floor, where a member presenting the broad seal of his State was not permitted to occupy the seat; and if there was a contest, it was to be settled afterwards. It has always been customary to endeavor to keep the representation of the State full. I hope this application will be agreed to for the sake of consistency, and for the purpose of having uniformity. Our institutions depend very much upon a uniformity in the construction of the Constitution, and I at least like to see uniformity of action in the body to which I belong—the Senate of the United States. There will be no harm done to any human being by this course.

It is said that there are doubts as to whether Mr. Dixon is entitled to the seat. If there be doubts, as the Senator from Tennessee has said, to whom should you give the benefit of them? Of course to the party claiming the seat under the broad seal of one of the sovereign States of this Union, equally interested with us in preserving the Constitution. Hence it is that I say he should be per mitted to take his seat, and then, when the report comes in, in the language of the Senator from South Carolina, we can consider it maturely. By the course that I have proposed we shall stick to precedent, and cannot be charged with evasion, or with changing our course for any consideration.

Mr. BADGER. Mr. President, from what has fallen

charged with evasion, or with changing our course for any consideration.

Mr. BADGER. Mr. President, from what has fallen from the gentlemen who have addressed the Senate upon this subject, it appears to me undeniable that there are some difficulties connected with the inquiry suggested by the resolution of the Senator from California. I am not prepared now to express any definite opinion as to the proper course which the Senate should adopt in regard to the subject under their consideration. I have not been able, so far, to see the necessity for any reference of this question to a committee. The facts of the case are all beable, so far, to see the necessity for any reference of this question to a committee. The facts of the case are all before the Senate; no evidence is to be heard by a committee; no inquiry is to be made by which the state of the question before the Senate can be varied or affected; but still, sir, it may, for aught I am able at present to perceive, be necessary, or, if not necessary, proper that there should be a previous investigation by a committee. It is highly important, at all events, that this question should be fully considered, and be fairly and impartially decided. I am not prepared at this moment to vote upon the question under consideration before the Senate. I the question under consideration before the Senate. It think ample opportunity should be afforded to every member of the body to make up a definite opinion upon it; and I would therefore move that the Senate adjourn.

The motion was agreed to, and the Senate adjourned.

WEDNESDAY, DECEMBER 8, 1852. The PRESIDENT of the Senate said: The Chair feel under the necessity of stating to the Senate that, ins much as the question is not decided who is entitled this seat, and inasmuch as the list which contains t names of all the Senators of the last session shows amo them that of David Meriwether, he cannot, without order of the Senate, direct that name to be expung He wishes, therefore, that the Senate will take into c

sideration, as the yeas and nays have been ordered, we ther the name of Mr. Meriwether shall temporarily dispensed with, or whether his name shall be called. chair repeats again that he does not feel at liberty, the question is decided as to who is entitled, to have name stricken from the list.

Mr. DAWSON. I would ask that the credentials

ler which Mr. Meriwether took his seat be read, in or that we may see whether or not, according to the t mony on our table, his name is entitled to be upon

Mr. BRODHEAD. I do not see any good end

to relieve ourselves of this difficulty-because it man ly raises the whole question—unless by general cont we agree that Mr. Meriwether's name shall not be od until the whole matter is settled by the Senate, either pose that by general consent we agree to that course,

thus reserve the question.

Mr. CLEMENS. It seems to me that this matter ermines the whole question. It is certainly the matter which will determine my vote. If Mr. Meri ther is here claiming the seat, or if any body is claim determines my vote, so far as the amendment now pend ing is concerned.

The PRESIDENT. The Senator will permit the Char to state to him that the question is simply whether, on Mr. CLEMENS. If he is a member of the Senate if

name must be called. If he is not, it cannot be. If lis a member of the Senate, I insist that his name shallbe called. If he is not a member of the Senate, no oneas right to call his name. Mr. BRODHEAD. He is interested in the question

Mr. CLEMENS. But still his name must be calle if

Mr. DAWSON. I called for the reading of the creen tials in consequence of the suggestion of the Chair, low is the roll of Senators made out? By the Secretary no the Presiding Officer, of course. How do you ascerbin an individual to be a member? His credentials estatish that fact. If he is a Senator for a full term, he holden seat for six years from the 4th of March of a particiar seat for six years from the 4th of March of a particular year. When that period expires, of course his name is stricken from the list. Mr. Meriwether's credentials were until the first Monday of September last. That period has passed. What authority, then, has the Presiding Officer or the Secretary to keep Mr. Meriwether's name on the roll? The Senate cannot order a man's name to be placed upon the roll, except according to the creden-tials before them, unless there be a contested election; and then the Senate must settle the right between the parties. I did not wish to change the issue. The only object I had in view was to give the reasons why I thought Mr. Meriwether's name ought not to be called. I called for the reading of his credentials in order that every one might see that his term of service expired on the first Monday of September last, and that therefore his name is not now entitled to be upon the roll.

Mr. CASS. It appears to me that either case brings the same question before this body. If, in calling the names of the members as they stood on the first of September last, the Secretary should come to the name of Mr. Meriwether, and any body should object to his name being called, that would bring up the question. You have to determine whether Mr. Meriwether is now a member of your body. So that in either case the effect will be precisely the same. I do not see that it makes any difference which course we parsue. Nor do I see that the limitation which the Governor affixed to the tenure of the office affects the question. If the Legislature elects a Senstor for six years and the Governor gives him a certificate for only three years, it would not produce the slightest effect upon the tenure of office of the person elected. When the Governor appointed Mr. Meriwether he fulfilled his constitutional duty; but the tenure of office does not describe the constitutional duty; office does not depend upon the opinion of the Governor. He does not preclude that question at all. The tenure of the appointment, when it is once made, depends on the Constitution, and of that we are necessarily the judges. therefore consider the certificate of the Governor as conclusive evidence as to the appointment of Mr. Meri-wether for the time being. But how long Mr. Meri-wether shall retain his seat in this body is a question entirely beyond the jurisdiction of the Governor; so it seems

The PRESIDENT. The Chair would inform honorable Senators that he had no disposition to bring up any dis-cussion whatever. He wished the Senate to understand the precise position in which the matter stood. Inas much as the question is pending, he did not feel at liberty, without the authority of the Senate, to strike Mr. Meriwithout the authority of the Senate, to strike Mr. Meri-wether's name from the roll, because the very question pending is as to whether he is or is not entitled. And therefore the Chair brought the point to the view of the Senate, with the hope and expectation that they would devise some mode by which to get clear of the difficulty without prejudicing the claim of the individual who presents credentials showing the action of the Legislature, or the claim of Mr. Meriwether, who before occupied the sent. The suggestion of the Senator from Virginia is that, by unanimous consent, the name of Mr. Meriwether, for the present, be omitted from the roll until there shall be decision by the Senate of the constitutional question.

Mr. CASS. I understood that that was objected to by

Mr. HUNTER. I had no desire to say any thing in re-ference to the merits of the question. The time has not come for that. I spoke only as to the proper mode of getting at it. Now, contested elections may present two to the right to the seat, after it shall have been examined. I am, however, in favor of the amendment of my friend from North Carolina, which is, that Mr. Dixon shall be permitted to take the oath of office before any reference